INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	8
Summary of argument	8
Argument:	
A. The decision below finds no support in the language of the Act, and would cripple its effectiveness	11
B. The decision of the court below overturns a long-established administrative and judicial construction of similar provisions of the predecessor Act of 1906 and of similar state statutes, on no adequate basis contained in the 1938 Act	26
Conclusion	34
Appendix A	35
Appendix B	57

CITATIONS

Cases:	
Berkey v. *Third Avenue Ry. Co.*, 244 N. Y. 84	17, 18
City of Wyandotte v. *Corrigan*, 35 Kan. 21	16, 23
Commonwealth v. *Lutz*, 137 Pa. Super. 449	31
Crall v. *Commonwealth*, 103 Va. 855	24
Frank v. *United States*, 192 Fed. 864	19
Kaufman v. *United States*, 212 Fed. 613	27
MacAndrews & Forbes Co. v. *United States*, 212 U. S. 585	
Milbrath v. *State*, 138 Wis. 354	24
Nunnelly v. *Southern Iron Co.*, 94 Tenn. 397	22
Overland Cotton Mill Co. v. *People*, 32 Colo. 263	16, 24, 26
Patterson v. *United States*, 222 Fed. 599, certroiari denied, 238 U. S. 635	25
People (Belleci) v. *Klinger*, 164 Misc. (N. Y.) 530	24
People v. *Detroit White Lead Works*, 82 Mich. 471	24
People v. *Duke*, 19 Misc. (N. Y.) 292	23
People v. *Fleishman*, 133 Misc. (N. Y.) 288	24
People v. *Schwartz*, 28 Cal. App. (2d) 775	24, 25, 26, 31
Scott v. *State*, 171 Wis. 487	24
State v. *Brown*, 151 Minn. 340	25
State v. *Burnam*, 71 Wash. 199	16, 25, 26, 31
State v. *Cooley*, 141 Tenn. 33	24
State v. *Gilbert*, 213 Wis. 196	23, 24
State v. *Parker*, 112 Conn. 39	24

Cases—Continued. Page

State v. *Ross*, 55 Ore. 450 23, 24
State v. *Thomas*, 123 Wash. 299 24
Turner v. *State*, 171 Tenn. 36 25, 31
United States v. *Atlantic Commission Co., Inc.*, 45 F. Supp. 187 25
United States v. *Balint*, 258 U. S. 250 20
United States v. *Buffalo Cold Storage Co.*, 179 Fed. 865 28
United States v. *General Motors Corp.*, 26 F. Supp. 353, affirmed, 121 F (2d) 376, certiorari denied, 314 U. S. 618 25
United States v. *Kellett*, reported in White and Gates, *Decisions of Courts in Cases under the Federal Food and Drugs Act*, pp. 711, 713 28
United States v. *MacAndrews & Forbes Co.*, 149 Fed. 823, writ of error dismissed, 212 U. S. 585 16, 25
United States v. *Mayfield*, 177 Fed. 765 28, 31
United States ex rel. McGrath v. *Mathues*, 6 F. (2d) 149 25
United States v. *Snyder*, 14 Fed. 554 27
United States v. *Winslow*, 195 Fed. 578 25
Wood v. *United States*, 204 Fed. 55, certiorari denied *sub nom. Rhea* v. *United States*, 229 U. S. 617 27

Statutes:

Clayton Act, Sec. 14, 38 Stat. 736, 15 U. S. C. 24 25
Criminal Code, Sec. 332, 35 Stat. 1152, 18 U. S. C. 550 6, 27
Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, 21 U. S. C. 301, *et seq*:
Sec. 201 3, 4, 12, 16, 35
Sec. 301 11, 12, 14, 15, 16, 18, 35
Sec. 303 7, 8, 9, 12, 13, 15, 16, 18, 30, 35
Sec. 304 19
Sec. 305 6
Sec. 501 4
Sec. 502 3, 4, 5
Sec. 505 14
Pure Food and Drugs Act of 1906, c. 3915, 34 Stat. 768, 21 U. S. C. [1934 ed.] 1–26:
Sec. 2 19
Sec. 9 30
Sec. 12 26
Sec. 14 19
Williams Tenn. Code Ann., 1934, Sec. 7344 24

Congressional material:

78 Cong. Rec. 4572, 8980 30
83 Cong. Rec. 7775 30
H. Rep. No. 2755, 74th Cong., 2d sess., S. 5 30
H. Rep. No. 2139, 75th Cong., 3d sess., S. 5 30
S. 1944, 73d Cong., 1st sess 28

Congressional material—Continued. Page

S. 2000, 73d Cong., 2d sess. 29
S. 2800, 73d Cong., 2d sess. 29
S. 5, 74th Cong., 2d sess. 29
Sen. Rep. No. 493, 73d Cong., 2d sess., S. 2800 19, 30
Sen. Rep. No. 361, 74th Cong., 1st sess., S. 5 19, 30
Sen. Rep. No. 646, 74th Cong., 1st sess., S. 5 30
Sen. Rep. No. 152, 75th Cong., 1st sess., S. 5 30

Miscellaneous:

29 Col. L. Rev. 357 24
Douglas and Shanks, *Insulation from Liability through Subsidiary Corporations*, 39 Yale L. J. 193 17
Dunn, *The Federal Food, Drug, and Cosmetic Act; A Statement of Its Legislative Record* 19, 28, 29, 30
42 Harv. L. Rev. 824 24
Stevens, *Corporations*, p. 325 24
Wilson, Woodrow, *The Lawyer and the Community*, 35 Am. Bar Ass'n Repts. 419 21
40 Yale L. J. 307 24

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 5

THE UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH H. DOTTERWEICH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 177–181) is reported at 131 F. (2d) 500.

JURISDICTION

The judgment of the circuit court of appeals was entered December 3, 1942 (see R. 177), and a petition for rehearing was denied January 4, 1943 (R. 186, 187).[1] The petition for a writ of

[1] The original judgment was one of reversal without mention of a new trial (R. 181). On denial of the motion for rehearing the court ordered that the cause be remanded for a new trial "on the issue not submitted to the jury on the prior trial, but alluded to in the opinion of this Court, namely, whether the appellant [respondent here] operated the corporation as his 'alter ego' or agent" (R. 186, 187).

certiorari was filed February 8, 1943, and granted April 5, 1943 (R. 189). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the manager of a corporation, having general supervision of its business consisting of the packaging, sale, and shipment of drugs, may be prosecuted under the Federal Food, Drug, and Cosmetic Act of 1938 for the introduction, in the course of the corporate business, of misbranded and adulterated drugs into interstate commerce.

STATUTE INVOLVED

The pertinent portions of the Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, 21 U. S. C., Sec. 301, *et seq.*, are set forth in Appendix A, *infra*, pp. 35–36.

STATEMENT

On April 29 and August 5, 1940, informations were filed in the District Court for the Western District of New York, charging violations by Buffalo Pharmacal Company, Inc., a corporation, and respondent Joseph H. Dotterweich of section 301 (a) of the Federal Food, Drug, and Cosmetic Act, through the introduction and delivery for introduction into interstate commerce of misbranded and adulterated drugs (R. 2–7). The two informations were consolidated for trial, and

three counts were submitted to the jury (R. 1, 13–14, 160, 165), which disagreed as to the corporation but convicted respondent Dotterweich on all three counts (R. 1, 15, 173). On October 27, 1941, he was sentenced to a five-hundred-dollar fine on each count, with payment suspended under all but one count, and he was placed on sixty days' probation (R. 2, 15, 173).

The counts on which respondent was convicted charged him with the introduction and delivery for introduction into interstate commerce of (1) a bottle of misbranded cascara compound, on or about October 2, 1939 (R. 1, 4);[2] (2) a bottle of adulterated digitalis tablets, on or about January 8, 1940 (R. 1, 5–6); and (3) a bottle of misbranded digitalis tablets, on or about January 8, 1940 (R. 1, 6–7).[3]

The evidence of misbranding under the first count was that the bottle bore a label reading "1,000 tablets, cascara compound * * * (Hinkle)," followed by a list of ingredients one of which was strychnine sulphate, whereas at the time of shipment the then current revision of the official National Formulary, which was the statutory standard under sections 201 (j) and 502 (g) of

[2] A count of the information (R. 2–3) which was dismissed (R. 1) charged that the cascara was also adulterated.

[3] The same bottle of digitalis tablets was the subject of both the adulteration count and the misbranding count. The facts constituting the interstate character of the commerce were stipulated (R. 7–12).

the Act,[4] omitted strychnine sulphate from the Hinkle formula (R. 26, 27, 40–41, 45–47). The evidence of adulteration and misbranding of the bottle of digitalis tablets was that, in violation of sections 501 (b) and 502 (a) of the Act, the tablets were of less than half the potency of 1 U. S. P. unit of digitalis per tablet, which the United States Pharmacopoeia called for and which the label on the bottle represented them to have (R. 52, 56, 59, 77, 98).[5] The court below held that the findings of misbranding under the first count, and

[4] Section 502 (g) (21 U. S. C. 352 (g)) provides that a drug shall be deemed misbranded "If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein"; and section 201 (j) (21 U. S. C. 321 (j)) provides that "The term 'official compendium' means the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them." The "Hinkle formula" is contained in the National Formulary (R. 40, 110), which therefore is the statutory standard for determining whether tablets sold by the name "Hinkle" are misbranded. The information (R. 4) and the charge to the jury (R. 160, 161) both proceeded on the theory that the cascara was misbranded only if its label was false and misleading, as proscribed by section 502 (a) (21 U. S. C. Sec. 352 (a)), and the conviction was on that ground.

[5] Section 501 (b) (21 U. S. C. 351 (b)) provides that a drug shall be deemed adulterated "If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium." Digitalis is a drug recognized in the United States Pharmacopoeia (R. 71–73, 77), which therefore is the statutory standard. Since the label on the bottle of digitalis tablets here involved represented them to have the

of adulteration and misbranding under the second and third counts, were sustained by the evidence (R. 178).[6]

The corporation was not a manufacturer of drugs but a jobber purchasing from manufacturers (R. 17, 19, 30, 126), and had shipped the drugs in question in interstate commerce after repackaging them under its own label (R. 7–12). Respondent was the corporation's president and

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content and strength called for by the United States Pharmacopoeia, there was no misbranding under section 502 (g), but since they did not in fact possess such strength, there was a misbranding under section 502 (a) (21 U. S. C. 352 (a)), which provides that a drug shall be deemed misbranded "If its labeling is false or misleading in any particular."

[6] The defense under the second and third counts was weaker than the opinion below makes it appear. There was no evidence that digitalis tablets would deteriorate under the conditions under which they were kept (R. 59–60, 64–65) and the evidence was not clear that they would deteriorate at all short of being cooked or liquefied (R. 55–56, 65, 87–89, 90, 100–101, 146) since the causes of deterioration have not been established (R. 56, 88, 89, 100). However, assuming that the tablets would lose potency with time, the evidence also showed a greater lapse of time between manufacture of the tablets and their sale by defendants than between sale by defendants and analysis by the government. The tablets were completed by Arner and Co. on February 3, 1939 (R. 145), were shipped to defendants in five lots between March 2, 1939, and October 13, 1939 (R. 128–129), were sold by defendant corporation about January 8, 1940 (R. 59), and assayed by government pharmacologists on March 4, 9–11, 1940 (R. 50, 74). Also, Arner and Co. did not test the potency of these tablets before shipping them to defendant corporation (R. 135), and no evidence, which would have been crucial if available, was presented that defendants tested them or the batch from which they came at any time before selling them.

general manager (R. 30, 35, 37, 143–145). He had not personally packed or shipped the drugs in question, but was in general charge of the corporation's operations and the packaging and shipping were carried out in accordance with his general instructions (R. 30–31, 143–144). He himself had worked out and established the method by which the corporation operated (R. 129). On the days that these drugs were shipped, he was the person having supervision over all employees (R. 35, 143). The court instructed the jury that for it to find him guilty required a finding that he was "responsible" for the shipments, that is, that they were made under his "supervision" as "General Manager" (R. 164).

Although rejecting all other grounds urged by respondent[7] the court below reversed his conviction on the ground that the criminal provisions of the Act were aimed not at employees but solely at nominal principals.[8] It held that "the stat-

[7] Respondent contended that the evidence did not sustain the charges of adulteration and misbranding, that by virtue of section 305 of the Act (21 U. S. C., sec. 335) a prosecution could not be maintained without his having first been given a hearing before the Administrator, and that the jury's failure to convict the corporation was so inconsistent with his own guilt that the verdict against him could not be allowed to stand (R. 168–172). The opinion of the court below disposes of these contentions (R. 178–179).

[8] The phrase "nominal principals" is used to avoid confusion with definition of a "principal" contained in section 332 of the Criminal Code (Act of Mar. 4, 1909, c. 321, Sec. 332, 35 Stat. 1152, 18 U. S. C., Sec. 550).

ute must be construed to mean that only the drug dealer, whether corporation or individual, is the 'person' who causes the 'introduction' or 'delivery for introduction' of misbranded or adulterated drugs into commerce" (R. 180), and that where the "dealer" is a corporation, an individual connected therewith may be held personally only if he is operating the corporation "as his 'alter ego' or agent," so that *he* is *its* principal (R. 181, 186, 187). The court relied upon section 303 (*c*) of the Act, which extends immunity from the penalties provided by section 303 (a) to a person who can establish a guaranty "signed by, and containing the name and address of, the person residing in the United States *from whom he received* in good faith the article." [Italics supplied.] The court reasoned that since it is the drug dealer—in this case the corporation—that "receives" the goods and would receive the guaranty, if given, the protection of section 303 (*c*) would extend only to such dealer and not to his employees; that Congress could not have intended to make the employee's guilt depend upon whether his employer had received such a guaranty; that it would be extremely harsh to charge the innocent employee criminally with the risks of the business as the drug dealer himself is charged; and that there is no basis in the statute "for drawing a distinction between agents of high or low rank" (R. 180–181). Judge Swan, who wrote the opinion, dis-

sented from the majority's construction of the Act (R. 181). In reversing and remanding the case for a new trial, the court directed that there be submitted to the jury the issue of whether respondent operated the corporation as his "alter ego" or agent (R. 186, 187).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In construing the criminal provisions of the Federal Food, Drug, and Cosmetic Act of 1938 as not applicable to a responsible corporate officer such as respondent.

2. In reversing the judgment of conviction.

SUMMARY OF ARGUMENT

A. The construction adopted below is, as the court itself recognized, contrary to the literal meaning of the Act, which penalizes every "person" introducing nonconforming products into interstate commerce. That construction proceeded from the views that the guaranty and immunity provision in clause (2) of section 303 (*) protected only the principal and that Congress intended the penal provisions to be limited by the guaranty provisions. No indication exists, however, that Congress desired the guaranty provisions to control the scope of the penal provisions. In any event the court misinterpreted the scope of the guaranty, which issues to the dealer from the "person" from whom he "receives" the

goods: the purpose of the word "receives" is not to restrict the class protected by the guaranty but to enlarge the class which can issue it, in contrast to the guaranty authorized by clause (3) of section 303 (c) which can be issued only by the manufacturer. Also, the anomalous results which can flow from limiting the protection of a clause (2) guaranty to one who in a narrow sense "receives" it, whereas the protection afforded by a clause (3) guaranty is not so limited, argue against the interpretation adopted below.

Furthermore, the construction below is erroneous because its effect would be to render the individual agent of the corporation immune from penal liability even if he did a proscribed act with intent "to defraud or mislead." The result of such a rule would be in such cases as well as in cases without evil purpose to weaken the sanctions of the Act insofar as corporately organized business is concerned, since a fine is the only penalty to which a corporation can in the nature of things be subjected and is borne by the often innocent shareholders and not by the responsible management.

The exception which the court below recognized where an individual operates a corporation as his "alter ego" can do little to preserve the effectiveness of the Act. It introduces a vague test and will not be relevant in the great majority of violations.

It has been widely recognized that the purpose of criminal penalties cannot be achieved if their imposition is restricted to the corporation alone, and that the deterrent effect of criminal penalties becomes real only if visited also on the individuals responsible for corporate crimes. In consequence, case after case has upheld the imposition of criminal penalties on the responsible individuals, including the managers even though they may not have participated directly in the guilty act. These cases have ranged through all types of criminal statutes, including state food and drug acts and the federal Pure Food and Drugs Act of 1906. There is no reason for assuming that Congress in enacting this Act intended it to be less effective than the norm.

B. The decision below departs from the settled judicial and administrative construction of the 1906 act, which has heretofore been followed also under the present Act. The court's reason for this departure is inadequate. The only possibly relevant difference between the two acts, the court itself recognized was inconsequential. The ground actually relied on was available with at least equal force under the 1906 act and was never even seriously urged. The guaranty was never thought to be so restricted a protection. The broader protection has been recognized administratively since 1906.

The danger which the court below feared, from harassment of clerks who were unwitting tools, is

more apparent than real. As Judge Swan observed in dissenting, such a danger can be left to the good sense of the Administrator, the United States Attorneys, and the juries. Judge Swan's confidence is not misplaced, as is shown by this case, where the clerks have not been informed against, and by the constant administrative practice to that effect since 1906. The act, which is phrased generally, certainly should not be construed to relieve from liability clerks who act "with intent to defraud or mislead." But even if the implications of the guaranty provision relieved clerks from liability those implications would not relieve respondent, who alone had authority on behalf of the corporation to seek a guaranty.

ARGUMENT

A. The decision below finds no support in the language of the Act, and would cripple its effectiveness

There can be little question, as the court below recognized (R. 180), that literally applied the act penalizes the individuals responsible for an offense as well as the employer on whose behalf the offense was committed. The interdiction of the Act (Sec. 301, Appendix A, *infra*, p. 35) runs against "any person who" introduces or delivers "for introduction into interstate commerce * * * any food, drug, device, or cosmetic that is adulterated or misbranded." The word "person" is defined to mean, in addition to individuals

which it would clearly mean anyway, corporations and others. Thus the statute penalizes all individuals and corporations performing the prohibited acts.

The court below, however, held that the responsible human actors whose omissions or misdeeds cause the interdicted acts to occur are not within the reach of the penal provisions, but that only the dealer, in this case the corporation, to whom the acts or omissions of the agents are imputed, is penally answerable.[9] This interpretation was based on the guaranty provision of section 303 (c) (2); it is, as we shall demonstrate, not supported by that provision. Moreover, and even more clearly fatal, it would relieve from liability a corporate officer or employee even though he performed the interdicted acts on behalf of the corporation with intent to defraud or mislead.

The pattern of the Act is a composite. Section 201 (e) defines the word "person" to include any "individual, partnership, corporation, and association." Section 303 (a) imposes specified penalties, regardless of good faith or absence of intent to defraud or mislead, upon any "person" violating any of the prohibitions of section 301, and section 301 (a) prohibits the "introduction or delivery for introduction into interstate commerce of

[9] The only exception to this rule which the court recognized is where the individual is operating the corporation "as his 'alter ego' or agent," so that *he* is *its* principal (R. 181, 186, 187).

any food, drug, device, or cosmetic that is adulterated or misbranded." Section 303 (b), however, imposes more severe penalties upon violations of the same prohibitions when committed "with intent to defraud or mislead." Section 303 (c) (2) confers immunity on a "person" establishing a written guaranty of conformity from the person from whom he "received" the goods; this immunity is from prosecution under section 303 (a) and not from prosecution under section 303 (b).

The decision below was based on this guaranty provision; the reasoning was that the guaranty protected only the one who "received" the goods; the corporation, not its agents, received them; and Congress could not have intended the immunity conferred by the guaranty to be narrower than the scope of the penal provisions. There are several flaws in this reasoning. One is that suggested by Judge Swan in his dissent, that the fact that a conditional immunity is not as broad as a penal provision's coverage is no ground for narrowing the penal coverage. Congress may well have wanted it that way, and if one is satisfied that it did not the proper course is to construe the immunity to fit the unambiguous penal provisions rather than measuring the penal provisions to fit the ambiguous immunity. A second objection to the court's reasoning is that it misconstrued the effect of the guaranty authorized by Section 303 (c) (2). Clause (3) of section 303 (c) also au-

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thorizes a guaranty, conferring immunity in the case of adulteration of coal-tar colors. This immunity differs from the former one in that (1) it is protective only if it provides that the colors come "from a batch certified in accordance with the applicable regulations promulgated by the Administrator," and (2) it must be signed by "the manufacturer," whereas the former guaranty may be signed by "the person * * * from whom he received in good faith the article." It is apparent that the word "received" in clause (2) was designed to enlarge the class that could give the guaranty, to include dealers as well as manufacturers, and not to restrict, as the court below thought, the class benefited by the guaranty.

The error of the restriction which the court below found in the immunity is further suggested by the anomaly which would result from holding that a clause (2) guaranty affords less protection than a clause (3) guaranty. The unauthorized introduction of new drugs (section 505, 21 U. S. C. Sec. 355) is a violation of section 301 (d) and the applicable immunity provision is therefore clause (2). Under the construction adopted below, since a manager could successfully claim immunity under a guaranty in the case of coal-tar colors, he could be convicted in the absence of a guaranty, but not so in the case of new drugs which might themselves be coal-tar products. This anomaly can be avoided, as we believe Congress intended, by construing the guaranty under

clause (2) to confer protection on both a dealer and its agents.

The position adopted by the majority below would go far to emasculate the statute. The court below recognized that the criminal penalties of section 303 (a) are, without regard to good faith or absence of intent to defraud or mislead, specifically made applicable to "any person" violating the prohibition of section 301 (a) (R. 180). While its reasoning, based on the guaranty provisions of section 303 (c), could not conceivably apply to a prosecution under section 303 (b) for acts done "with intent to defraud or mislead" since section 303 (c) does not purport to provide under any circumstances an immunity from the penalties of section 303 (b), it is nevertheless true that the prohibition of section 301 (a) is the same whether a prosecution for its violation is brought under section 303 (a) or section 303 (b). It is section 301 (a) that the court construes to apply only to the "dealer." But the same language cannot have two different meanings: it cannot apply to the drug dealer alone when the prosecution is brought under section 303 (a), and yet apply to other persons as well when the prosecution is brought under section 303 (b) for a violation resulting from a corporate agent's "intent to defraud or mislead." The word "person" in section 303 (a) obviously means, in the light of sec-

tion 201 (e), any individual, partnership, corporation, or association causing the act prohibited by section 301 (a),[10] and section 303 (b) clearly applies only to the same persons, merely providing stricter penalties when such persons "act with intent to defraud or mislead." It follows, although the present case involves an unintentional violation, that the immunity conferred upon responsible corporate officers by the decision below logically would extend to such officers even when acting with intent to defraud or mislead.

The court below recognized individual liability only where the corporation acts as the "alter ego" of its manager. However, it would seem a safe assumption that Congress did not intend indi-

[10] Even without aid from the definition of "person" contained in section 201 (e), there would be authority for construing the word "person" as used in section 303 (a) to include both a corporation and its responsible human agents. *City of Wyandotte* v. *Corrigan*, 35 Kan. 21 (1886); *Overland Cotton Mill Co.* v. *People*, 32 Colo. 263 (1904); *State* v. *Burnam*, 71 Wash. 199 (1912). The inclusion in the Act of section 201 (e) renders applicable the conclusion of Judge Hough in *United States* v. *MacAndrews & Forbes Co.*, 149 Fed. 823, 832 (C. C. S. D. N. Y.), writ of error dismissed, 212 U. S. 585, that "When the statute declares that certain acts notoriously to be accomplished under modern business conditions only through corporate instrumentality shall be misdemeanors, and further declares that the word 'person' as used therein shall be deemed to include corporations, such statute seems to me clearly passed in contemplation of the elementary principle that in respect of a misdemeanor all those who personally aid or abet in its commission are indictable as principals."

vidual liability to rest on the misty uncertainty involved in the disregard of corporate entity. A test based solely on whether the responsible individual is operating the corporation as his "alter ego" or agent is neither a desirable nor practicable test to be read into criminal law administration in the absence of clearer Congressional intent. The terms "alter ego," "agency," "instrumentality," "tool," "dummy," etc., would offer false certainty to a jury. "These concepts themselves need defining. At best they merely state results." Douglas and Shanks, *Insulation from Liability Through Subsidiary Corporations,* 39 Yale L. J. 193, 195 (1929). In a very real sense, a corporation is always the "agency" or "instrumentality" or "alter ego" for a particular purpose of those for whose benefit it is being operated; it exists only to do something on their behalf. The courts, however, have used these terms to describe the situation where dominion is "so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent." *Berkey* v. *Third Avenue Ry. Co.,* 244 N. Y. 84, 95 (1926).[11] It would not be desirable nor practicable to make the responsibilities of ordinary corporate agents

[11] Corporations act only by human agents, and heretofore it has never been supposed that the responsibilities of agents for their acts begin only when the relation has been reversed and the ostensible principal has become the agent, and the ostensible agent the principal.

depend upon a test which, "enveloped in the mists of metaphor" (*Berkey* v. *Third Avenue Ry. Co.*, 244 N. Y. at 94), is so difficult of jury application. And, of course, confinement to that test would result in infrequent prosecution of the agent responsible for corporate wrongdoing. For rarely does the individual whose act or omission has resulted in a corporation's shipping adulterated or misbranded food or drugs in interstate commerce exercise such dominion and control over the corporation that it is in fact his "alter ego" or agent, and he its principal. In practical effect, therefore, the decision of the court below relieves responsible corporate officers of all the criminal penalties provided by sections 303 (a) and 303 (b) of the Federal Food, Drug, and Cosmetic Act, no matter how direct their causal relation to the corporate violation of section 301 (a).

In relieving the individuals most responsible for the wrongful conduct, the effect of the court's decision is to render much less effective, to the extent that the food and drug business is corporately organized, the penalties of fine and imprisonment provided by the Act. For a corporation as such cannot be imprisoned. Ordinarily, and particularly in large corporations, the persons penalized by seizures of the misbranded or adulterated articles[12] or by the assessment of

[12] While the seizure provisions of section 304 (21 U. S. C., Sec. 334) are unaffected by the instant decision, since they operate against the goods themselves and not against "per-

fines against the corporation are the shareholders, who may not even be aware of the penalty or have power to rectify the error; the monetary loss through seizure or fine often operates merely as a license fee to carry on the business in an illegal manner.[13] The inequality that would thereby be created under the Act as between corporate business and business conducted by individual entrepreneurs or partners is apparent. A new advantage of incorporation would be provided.

Statutes imposing criminal liability for acts dangerous to the public even when committed

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sons," recourse to seizure is inadequate to remove adulterated or misbranded goods from the market without enforcement by an impracticably large investigative staff. It is the combined effect of the criminal, injunction and seizure methods that gives the statute its efficacy in protecting the public.

[13] In reporting S. 2800, one of the several bills introduced in the course of the legislative history of the Food, Drug, and Cosmetic Act of 1938, the Senate Committee on Commerce stated: "The penalties provided under the present Food and Drugs Act have proved wholly inadequate to bring about substantial compliance with the law on the part of those manufacturers who regard an occasional small fine as an inexpensive license to carry on their illicit operations." Sen. Rep. No. 493, 73d Cong., 2d Sess., S. 2800, p. 20 (Charles Wesley Dunn, *The Federal Food, Drug, and Cosmetic Act: A Statement of its Legislative Record* (New York, 1938), pp. 128–129); see also Sen. Rep. No. 361, 74th Cong., 1st Sess., S. 5, p. 27 (Dunn, 261). The old Act (21 U. S. C. [1934 Ed.], Secs. 1–26) provided no imprisonment for a first offense (*Frank* v. *United States*, 192 Fed. 864, 868 (C. C. A. 6)), and a maximum of one year's imprisonment and $300 fine for subsequent offenses (Sec. 2). A 1934 amendment treated more severely improper labelling of seafood (Sec. 14a).

without intent to harm, have as their aim the inculcation of an attitude of vigilant care on the part of those responsible for the operation of the industries affected."[14] *United States* v. *Balint*, 258 U. S. 250, 252. Enforcement of the present statute has therefore frequently proceeded directly against managerial personnel (see p. 32, *infra*), on the view that the prospect of a jail sentence in a

[14] The need for such an attitude as well as the effect of the rule for which we contend in inducing it are both illustrated by the instant record. Not all pure digitalis leaf is of the same potency (R. 72), one consequence of which is that its potency cannot be determined by chemical analysis but only by its effect on animals (R. 72). Arner and Co., which manufactured the digitalis tablets for the defendant corporation, added sugar and starch to the digitalis to make tablets, air-dried them to avoid loss of potency, and eventually sent them to the defendants (R. 132, 138–139, 129). Arner did not test them for potency at any time prior to the time when they were found deficient by the Government (R. 135, 136). There was no evidence that their potency was tested by defendant corporation before it sold them, and as such evidence would have been a complete defense on two counts for both defendants we may assume that such a test was not made. Respondent was general manager of the corporation (R. 143), and had devised its operating system (R. 129). It was he, therefore, who had the authority and opportunity to provide for such a test and he who failed to do it, and he alone can pass such a test into the operational routine as a protection against like future delinquencies.

The court's charge made respondent's authoritative position crucial. The charge instructed the jury that it could convict "if the evidence establishes to your satisfaction that it [the shipment] was made under authority conferred by him as general manager upon his subordinates, including the receiving and shipping clerk" (R. 164). An employee in a nonauthoritative position was not within the scope of this charge.

criminal case is the most effective deterrent to violations. By increasing the severity of the penalties where the acts are done with intent to defraud or mislead, the statute seeks also to relate the extent of the punishment to blameworthiness. The decision below nullifies this aim in large measure.

More than thirty years ago Woodrow Wilson stated:[15]

> Corporations do not do wrong. Individuals do wrong, the individuals who direct and use them for selfish and illegitimate purposes, to the injury of society and the serious curtailment of private rights. Guilt, as has been very truly said, is always personal. You cannot punish corporations. Fines fall upon the wrong persons, more heavily upon the innocent than upon the guilty, as much upon those who knew nothing whatever of the transactions for which the fine is imposed as upon those who originated and carried them through—upon the stockholders and the customers rather than upon the men who direct the policy of the business. * * *
>
> * * * * *
>
> Society cannot afford to have individuals wield the power of thousands without personal responsibility. * * *
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> * * * * *

[15] Woodrow Wilson, *The Lawyer and the Community*, 35 Am. Bar Ass'n Repts. 419, 427, 429, 431–432 (1910).

> In respect to the responsibility which the law imposes in order to protect society * * * against wrongs which are not breaches of contract but offenses against the public interest, the common welfare, it is imperative that we should regard corporations as merely groups of individuals, from which it may, perhaps, be harder to pick out particular persons for punishment than it is to pick them out of the general body of unassociated men, but from which it is, nevertheless, possible, to pick them out—possible not only, but absolutely necessary if business is ever again to be moralized. * * *

These observations are appropriate here, where neither the deterrent purpose of punishment, nor a purpose to do justice by relating punishment to responsibility and blameworthiness, is adequately served by punishing the corporation alone (and indirectly shareholders who may be innocent and powerless to rectify the error or even unaware of the penalty) and relieving entirely the very persons whose acts or omissions have had to be imputed to the corporation in order to justify its conviction. It would be an anomaly, fraught with serious consequences,[16] for the im-

[16] With respect to civil liability in tort the court in *Nunnelly v. Southern Iron Co.*, 94 Tenn. 397, 416 (1895), pointed out: "To permit an agent of a corporation, in carrying on its business, to inflict wrong and injuries upon others, and then shield himself from liability behind his vicarious character, would often both sanction and encourage the perpetration of fla-

putation of a criminal act to a corporate principal to leave the act itself bare of its criminal character so far as the responsible human actor is concerned. That anomaly has heretofore been avoided. The principle has been enforced that a corporate agent, through whose act, default, or omission the corporation commits a crime, is himself guilty individually of that crime. This principle has been applied whether the crime be one requiring wrongful intent, or one not requiring such intent.[17] Moreover, it has been applied not only to those corporate agents who themselves commit the criminal act, but also to those who by virtue of their managerial positions or other similar relation to the actor can be deemed responsible for its commission. This principle has received application in a wide variety of situations, some of which are the following:

1. Engaging on behalf of corporation in business conditioned on payment of license fees, without payment of such fees.—(*City of Wyandotte*

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grant and wanton injuries by agents of insolvent and irresponsible corporations." Citing this case, the court in *State* v. *Gilbert*, 213 Wis. 196, 217–218, (1933), held that the same principle is applicable to impose criminal liability upon "directors, officers, and agents of a corporation when funds intrusted to it have been converted, even though they were used for the benefit of the corporation and not the officers concerned." See also *People* v. *Duke*, 19 Misc. (N. Y.) 292, 295–296 (1897).

[17] Where the crime is one a corporation is not deemed capable of committing, the individuals alone are liable. See *State* v. *Ross*, 55 Ore. 459, 466 (1909).

v. *Corrigan*, 35 Kan. 21, 26 (1886); *Crall* v. *Commonwealth*, 103 Va. 855, 859 (1905).)

2. Maintenance of nuisance.—(*People* v. *Detroit White Lead Works*, 82 Mich. 471 (1890).)

3. Violation of child labor laws.—(*Overland Cotton Mill Co.* v. *People*,[18] 32 Colo. 263 (1904).)

4. Embezzlement, larceny, or obtaining money by issuance of worthless checks, on behalf of corporations.—(*State* v. *Ross*, 55 Ore. 450 (1909); *State* v. *Thomas*, 123 Wash. 299 (1923); *Milbrath* v. *State*, 138 Wis. 354 (1909); *State* v. *Gilbert*, 213 Wis. 196 (1933); *People* (*Belleci*) v. *Klinger*, 164 Misc. (N. Y.) 530, 533 (City Magistrate's Court, Borough of Manhattan, 1937); *State* v. *Cooley*,[19] 141 Tenn. 33 (1918).)

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[18] The conviction was sustained despite the fact that the officers of the corporation had issued specific instructions forbidding the employment of children under fourteen. For decisions that the criminal liability of a corporate or individual principal may be based upon an agent's act in violation of his express orders, "if within the general scope of the agent's authority," see, also, *People* v. *Schwartz*, 28 Cal. App. (2d) 775, 781 (1937); *Scott* v. *State*, 171 Wis. 487 (1920).

[19] In this case a corporate official in his capacity as such signed a check with the corporation as drawer. He was held liable criminally under a statute applicable to him only if he was the "maker or drawer," a position he did not occupy under section 20 of the Uniform Negotiable Instruments Law (Williams Tenn. Code Ann., 1934, Sec. 7344). The court concluded that the purpose of the statute could be effectuated only if it applied to the individual acting on behalf of the corporation. *Contra*, *People* v. *Fleishman*, 133 Misc. (N. Y.) 288 (1928) (criticized in 29 Col. L. Rev. 357, and 42 Harv. L. Rev. 824); and *State* v. *Parker*, 112 Conn. 39 (1930) (criticized in 40 Yale L. J. 307); the *Fleishman* and *Parker* cases are also questioned in Stevens, *Corporations* (1936), p. 325.

5. Violations of Sherman Anti-Trust Act.—(*United States* v. *MacAndrews & Forbes Co.*, 149 Fed. 823, 832 (C. C. S. D. N. Y.), writ of error dismissed, 212 U. S. 585; *Patterson* v. *United States*, 222 Fed. 599 (C. C. A. 6), certiorari denied, 238 U. S. 635; *United States* v. *Winslow*, 195 Fed. 578, 581 (D. Mass.); *United States ex rel. McGrath* v. *Mathues*, 6 F. (2d) 149 (E. D. Pa.); *United States* v. *General Motors Corp.*, 26 F. Supp. 353 (N. D. Ind.), affirmed, 121 F. (2d) 376 (C. C. A. 7), certiorari denied, 314 U. S. 618; *United States* v. *Atlantic Commission Co., Inc.*, 45 F. Supp. 187, 194 (E. D. N. C.)).[20]

6. Violations of state pure food laws.—(*State* v. *Burnam*, 71 Wash. 199 (1912); *People* v. *Schwartz*, 28 Cal. App. (2d) 775 (1937); *Turner* v. *State*, 171 Tenn. 36 (1937); *State* v. *Brown*, 151 Minn. 340, 343 (1922).)

It is significant that liability of managerial officers has not rested on their having knowledge of or a physical part in the guilty act. Where the crime does not require wrongful intent, an omission or failure to act becomes an entirely sufficient basis of a responsible corporate agent's liability. In such cases it is sufficient that it was within the

[20] The decisions usually so held independently of section 14 of the Clayton Act (38 Stat. 736; 15 U. S. C., Sec. 24); as Judge Wyche pointed out in *United States* v. *Atlantic Commission Co.*, *supra*, if the officers or agents are "personally charged with participation in the conspiracy there is no necessity for the application of Section 14 of the Clayton Act". (45 F. Supp. at 194).

agent's power by virtue of the relationship he bore to the company to have prevented the act complained of. See, for example, *Overland Cotton Mill Co.* v. *People, supra; State* v. *Burnam, supra;* and *People* v. *Schwartz, supra.* It would be difficult to conceive of a more responsible corporate officer, or one falling within more clearly applicable principles of the criminal liability of corporate officers, than respondent Dotterweich in the present case.[21]

B. The decision of the court below overturns a long-established administrative and judicial construction of similar provisions of the predecessor act of 1906 and of similar state statutes, on no adequate basis contained in the 1938 Act

Section 12 of the Pure Food and Drugs Act of 1906 (Act of June 30, 1906, c. 3915, 34 Stat. 768, 772), which the Act of 1938 supplanted, provided that—

> the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or fail-

[21] As previously shown, the court's reversal of respondent's conviction does not rest upon the basis that he had not personally made or ordered the shipments constituting violations of the Act, or upon a view that he was not responsible therefor, but upon a basis that would relieve him of liability even had he personally made or ordered the shipments and done so with intent to defraud or mislead.

> ure of such corporation, company, society, or association as well as that of the person.

Subsequently the aiding and abetting statute (Section 332 of the Criminal Code [Mar. 4, 1909, c. 321, 35 Stat. 1152; 18 U. S. C., Sec. 550]) was enacted, which provides:

> Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

Under the latter statute alone, without aid from the one defining the crime, corporate officers may be indicated as aiders and abettors of their corporate principal (*Kaufman* v. *United States*, 212 Fed. 613 (C. C. A. 2); *Wood* v. *United States*, 204 Fed. 55 (C. C. A. 4), certiorari denied *sub nom. Rhea* v. *United States*, 229 U. S. 617). So far as misdemeanors are concerned, however, Section 332 of the Criminal Code seems merely to have adopted the previously existing rule that—"When congress creates a statutory misdemeanor we must assume that it is done * * * with the intent that aiders and abettors, as well as the actual doers of the crime, may be punished under it. * * *" *United States* v. *Snyder*, 14 Fed. 554, 556 (D. Minn.). It follows that neither Section 12 of the Act of 1906 nor Section 332 of the Criminal Code was ever really essential to the prosecution of responsible corporate officers under

the Act of 1906; and without reliance upon either the courts rejected, in the early years of the Act's operation, the suggestion that criminal liability thereunder was restricted to nominal principals. *United States* v. *Mayfield*, 177 Fed. 765 (N. D. Ala.); *United States* v. *Buffalo Cold Storage Co.*, 179 Fed. 865 (W. D. N. Y.); *United States* v. *Kellett* (D. Utah), reported in White and Gates, *Decisions of Courts in Cases under the Federal Food and Drugs Act* (1934), pp. 711, 713.

This was the long-standing construction of the 1906 Act. The court below in the present case recognized that the omission from the 1938 Act of the language of Section 12 of the 1906 Act was without significance, stating that such language "was doubtless omitted as unnecessary because it states an obvious general principle of agency." (R. 281).[22] The court's decision therefore is

[22] The legislative history of the 1938 Act is silent as to the reason for the omission. The first bill introduced (S. 1944, 73d Cong., 1st Sess.) contained the following provision: "Sec. 18. (a) When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, employee, or agent acting for or employed by any person, within the scope of his employment or office, shall in every case be deemed to be the act, omission, or failure of such person, as well as that of the officer, employee, or agent. (b) Whenever a corporation or association violates any of the provisions of this Act, such violation shall also be deemed to be a violation of the individual directors, officers, or agents of such corporation or association who authorized, ordered, or did any of the acts constituting, in whole or in part, such violation." See Dunn, *The Federal Food, Drug, and Cos-*

not based on some feature in the 1938 Act different from the 1906 Act. In fact, the legislative history of the 1938 Act shows clearly that a major purpose of the new Act was to increase the severity

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metic Act; A Statement of Its Legislative Record (New York, 1938), p. 47. This same language was carried forward through several successive bills: S. 2000, 73d Cong., 2d Sess., Sec. 18 (Dunn, 63); S. 2800, 73d Cong., 2d Sess., Sec. 18 (Dunn, 83, 105); S. 5, 74th Cong., 1st Sess., Sec. 709 (Dunn, 205, 231). In S. 5, 74th Cong., 2d Sess., Sec. 707, as reported to the House of Representatives by the Committee on Interstate and Foreign Commerce, the language of subsection (b) as quoted above was changed to read: "Whenever a corporation or association violates any of the provisions of this Act, unless otherwise provided, such violation shall also be deemed to be a violation by the individual directors, officers, or agents of such corporation or association who personally ordered, or did any of the acts constituting, in whole or in part, such violation" (Dunn, 545). The Senate agreed to this provision (Dunn, 599, 613, 619). The bill containing it died in the House, however (Dunn, 633). S. 5, 75th Cong., 1st Sess., Sec. 2 (f), as introduced into the Senate, provided: "The term 'person' includes individual, partnership, corporation, and association. Unless otherwise hereinafter provided, the act, omission, or failure of any director, officer, employee, or agent acting for or employed by any person, within the scope of his employment, agency, or office, shall in every case be deemed to be the act, omission, or failure of such person, as well as that of the director, officer, employee, or agent who personally ordered or did any of the acts constituting, in whole or in part, such violation". (Dunn, 638). As the bill was reported by the Senate Committee on Commerce, however, the words "who personally ordered or did any of the acts constituting, in whole or in part, such violation," had been stricken (Dunn, 657). In Committee Print No. 3, August 1937, as recommended by the subcommittee of the Committee on Interstate and Foreign Commerce of the House, there appears for the first time the provision of

and effectiveness of the penal provisions especially by way of jail sentences,[23] rather than to render them less effective as the decision below unquestionably would do.

The oblique application made by the court of Section 303 (c) of the 1938 Act could as readily have been made of Section 9 of the 1906 Act (34 Stat. 768, 771), which similarly exempted a person from prosecution "when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States *from whom he purchases* such articles * * *." [Italics supplied.] Technically the corporate agent or employee is even less the one who "purchases" the articles within the language of the

section 201 (e) as finally enacted, to the effect merely that "The term 'person' includes individual, partnership, corporation, and association" (Dunn, 753).

The only conclusion to be derived from the legislative history is that Congress failed to enact a provision that would have required a corporate officer to have "personally" ordered or done an act constituting a violation, in order to be held personally responsible therefor, and that it felt that it was unnecessary to include language of the 1906 Act that merely "states an obvious general principle of agency."

[23] Sen. Rep. No. 493, 73d Cong., 2d Sess., S. 2800, p. 20 (Dunn, 128–129); Sen. Rep. No. 361, 74th Cong., 1st Sess., S. 5, p. 27 (Dunn, 261); Sen. Rep. No. 646, 74th Cong., 1st Sess., S. 5, p. 12 (Dunn, 487–488); Sen. Rep. No. 91, 75th Cong., 1st Sess., S. 5, p. 6 (Dunn, 681); Sen. Rep. No. 152, 75th Cong., 1st Sess., S. 5, p. 6 (Dunn, 692); H. Rep. No. 2755, 74th Cong., 2d Sess., S. 5, p. 4 (Dunn, 553); H. Rep. No. 2139, 75th Cong., 3d Sess., S. 5, p. 3 (Dunn, 816); 78 Cong. Rec. 4572, 8960 (Dunn, 90, 164); 83 Cong. Rec. 7775 (Dunn, 849).

1906 Act than he is the one who "received" them within the language of the 1938 Act. Yet the argument which is the whole basis of the court's decision never found acceptance under the 1906 Act. For example, in *United States* v. *Mayfield*, 177 Fed. 765 (N. D. Ala.), the court made it clear that only because the corporation could not establish a guaranty were its officers criminally liable under the 1906 Act. In fact, so far as we have been able to ascertain, the argument was never even seriously pressed. It has never found acceptance under any of the thirty-one state statutes, cited in Appendix B, containing substantially the same coverage and guaranty provisions as those of the 1906 and 1938 federal statutes. As previously shown the criminal penalty provisions of these state statutes have been applied to responsible agents occupying positions comparable to respondent's here, and have never been restricted to the "dealer" alone (*State* v. *Burnam*, 71 Wash. 199 (1912); *People* v. *Schwartz*, 28 Cal. App. (2d) 775 (1937); *Turner* v. *State*, 171 Tenn. 36 (1937); and the state courts have regarded the guaranty as protecting the employees. *People* v. *Schwartz, supra; Turner* v. *State, supra; Commonwealth* v. *Lutz*, 137 Pa. Super. 449 (1939). What the court below has done, therefore, is to reject under the 1938 Act a long-standing construction of the 1906 Act and of similar state statutes, on a ground that provides no basis

for distinguishing the 1938 Act. It would be strange if Congress had intended such a change, with the legislative history silent on the point except by way of showing a purpose to provide in the 1938 Act more severe and effective criminal penalties.

The policy of the Food and Drug Administration, in the exercise of its administrative discretion, has been to avoid prosecution of underlings acting under instructions.[24] In the calendar year ended December 31, 1942, more than 400 criminal cases were brought under the 1938 Act. About half (208) involved corporate defendants, and in approximately 30 percent of these (61) one or more officers or employees were joined with the corporation as defendants. Prosecutions of individuals have never been restricted to those who dominate the enterprise but have included persons with varying but substantial degrees of responsibility. The individual defendants have been persons such as respondent Dotterweich—persons with policy-making and discretionary functions quite apart from whether or not they control the whole enterprise—since they are the ones who have the power to initiate precautionary measures to avoid violations of the Act, and since jail sentences against such persons constitute a far

[24] The present case serves as an illustration. The workmen who performed the actual operations of bottling, labeling, and shipping were not made defendants. There is no suggestion of a guaranty here.

more effective deterrent than either a fine assessed against the corporation or seizure of the offending goods. The existing administrative practice, contemplating enforcement against responsible agents, officers, and employees who are above the level of mere hired hands following instructions, is a continuation of over thirty years' enforcement policy under the predecessor Act of 1906. Moreover, under both the 1906 and 1938 Acts the administrative practice has been to regard the guaranty as running with the goods so as to protect the employees as well as the dealer. This practice has been thought to be required by the Act rather than being the product of administrative discretion.

If the guaranty provision does limit the scope of the penal provisions, contrary to our view, it would seem that the proper interpretation of the limitation would be to exclude criminal liability of mere clerks and underlings, who would be without authority to obtain a guaranty on behalf of the corporation, and to impose criminal liability on the responsible officers who had authority on behalf of the corporation to obtain a guaranty and who failed to do it. Such a view would support the conviction of respondent, who clearly was the corporate official with authority to procure a guaranty. We believe, however, that the statute should not be construed to relieve clerks of liability in proper cases, since it is inconceivable

that Congress intended to spare clerks who act with "intent to defraud or mislead" or who negligently and contrary to instructions act so as to cause a violation of the Act. As we have seen, the statute speaks in general terms and contains no distinction between well-intentioned and other clerks. The distinction must be drawn administratively.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed and that of the district court affirmed.

Respectfully submitted.

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APPENDIX A

The Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, 21 U. S. C., Sec. 301 *et seq.*, in pertinent part provides:

SEC. 201 (21 U. S. C., Sec. 321). For the purposes of this Act—

* * * * *

(e) The term "person" includes individual, partnership, corporation, and association.

* * * * *

SEC. 301 (21 U. S. C., Sec. 331). The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

* * * * *

(h) The giving of a guaranty or undertaking referred to in section 303 (c) (2), which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 303 (c) (3), which guaranty or undertaking is false.

* * * * *

SEC. 303 (21 U. S. C., Sec. 333). (a) Any person who violates any of the provisions of section 301 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final such

person shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both such imprisonment and fine.

(b) Notwithstanding the provisions of subsection (a) of this section, in case of a violation of any of the provisions of section 301, with intent to defraud or mislead, the penalty shall be imprisonment for not more than three years, or a fine of not more than $10,000, or both such imprisonment and fine.

(c) No person shall be subject to the penalties of subsection (a) of this section, * * * (2) for having violated section 301 (a) or (d), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 301 (a), that such article is not adulterated or misbranded, within the meaning of this Act, designating this Act, or to the effect, in case of an alleged violation of section 301 (d), that such article is not an article which may not, under the provisions of section 404 or 505, be introduced into interstate commerce; or (3) for having violated section 301 (a), where the violation exists because the article is adulterated by reason of containing a coal-tar color not from a batch certified in accordance with regulations promulgated by the Administrator under this Act, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the coal-tar color, to the effect that such color was from a batch certified in accordance with the applicable regulations promulgated by the Administrator under this Act.

APPENDIX B

The Food and Drug Laws of the following States contain coverage and guaranty provisions which are substantially the same as those of the Federal Pure Food and Drugs Act of 1906 and the Federal Food, Drug, and Cosmetic Act of 1938:

1. Alabama—Code of Alabama, 1940, Title 2, Sections 1 and 331.

2. Arizona—Code Annotated, 1939, Sec. 68–410, Sec. 68–412.

3. Arkansas—Part 1 of Ch. 70 of Pope's Digest, as amended by Act 10.190, Reg. Sess. of 1939, Sec. 6008, Sec. 6015.

4. California—Ch. 3 of Div. XXI of Health and Safety Code, added by Ch. 731, Laws of 1939; amended by Ch. 1042, 1147, 1149, Laws of 1941, Sec. 26511, Sec. 26520.

5. Colorado—Statutes Annotated, 1935, Ch. 69, Sections 2, 9, 11.

6. Connecticut—Sec. 886e–919e of Ch. 135b of 1939 Supp. to General Statutes, Ch. 364, Laws of 1939 as amended by House Bill 2693, effective 1941, Sec. 3 (e), Sec. 6 (e).

7. Florida—Ch. 19656 (No. 661), Laws of 1939, Sec. 2 (b), Sec. 5 (b).

8. Georgia—Code Annotated, Sec. 42–108, Sec. 42–115, Sec. 42–9901.

9. Idaho—Code Annotated, 1932, Sec. 36–302, Sec. 36–311, Sec. 36–313.

10. Indiana—Burns Indiana Statutes Annotated, Sec. 35–1230 (e), Sec. 35–1233 (e).

11. Kansas—General Statutes Annotated, Sec. 65–602, Sec. 65–609, Sec. 65–610.

12. Kentucky—Revised Statutes, 1942, Sec. 217.060, Sec. 217.160, Sec. 217.990.

13. Louisiana—Act No. 142, Acts of 1936, amended by Act No. 185, Acts of 1942. Sec. 2 (c), Sec. 20 (d).

14. Maryland—Flack's Annotated Code, 1939, Art. 43, Sec. 189 and Sec. 193.

15. Massachusetts—Annotated Laws, Ch. 94, Sec. 191 and Sec. 193.

16. Michigan—Statutes Annotated, Title 14, Sec. 14.787 and Sec. 14.781.

17. Missouri—Statutes Annotated, Art. 2, Sec. 13027, Sec. 13028, Sec. 13029.

18. Montana—Revised Code, 1935, Ch. 237, Sec. 2578 and Sec. 2588.

19. Nebraska—Compiled Statutes, 1929, Sec. 81-908, Sec. 81-910, Sec. 81-911.

20. New Jersey—Statutes Annotated, Sec. 24:5-2, Sec. 24:4-3, Sec. 24:17-1.

21. New York—McKinney's Consolidated Laws, Art. 17, Bk. 213, Sec. 198.2, Sec. 214.

22. North Carolina—S. Bill No. 232, Reg. Sess. 1939, Sec. 2 (b), Sec. 5 (b).

23. Oklahoma—Oklahoma Statutes, 1941, Title 63, Sec. 182 and Sec. 260.

24. Pennsylvania—Compiled Statutes (Purdon's), 1936, Title 31, Sec. 2 and Sec. 5.

25. Rhode Island—General Laws 1938, Ch. 269, Ch. 1 and Ch. 7.

26. South Carolina—Code, 1942, Sec. 5128-27 (1) and (5).

27. South Dakota—Code, 1939, Sec. 22.0404, Sec. 22.0407, Sec. 22.9905.

28. Tennessee—Ch. 120, S. 568, 1941, Sec. 2 (b) and Sec. 5 (b).

29. Virginia—S. Bill 310, Reg. Sess. 1940, Sec. 2 (b) and Sec. 5 (b).

30. Washington—Pierce's Code, 1929, Sec. 2535 and Sec. 2539.

31. Wyoming—Revised Statutes, 1931, Supp. 1940, Sec. 45-117, Sec. 45-118.